STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF STATE OF MICHIGAN,

Plaintiff-Appellee,

v

Supreme Court No.
146872

THOMAS CLIFFORD WHITE,

Defendant-Appellant.

Third Circuit Court No. 03-011966
Court of Appeals No. 308275

146872
PLAE'S SUPPL

PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF
ORAL ARGUMENT REQUESTED

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

TIMOTHY A BAUGHMAN
Chief of Research
Training and Appeals

MADONNA GEORGES BLANCHARD (P74068)
Assistant Prosecuting Attorney
1441 St. Antoine, 11th Floor
Detroit, MI 48226
Phone: (313) 224-5764

Table of Contents

Page

Index of Authorities ii

List of Appendices v

Statement of Jurisdiction 1

Statement of Questions Presented 2

Statement of Facts 3

Argument 8

I. Violation of the 180-day rule is a matter of personal jurisdiction and is waived when a defendant pleads guilty unconditionally, regardless of whether the People received the notice required under the statute. The People did not receive notice of defendant's incarceration and defendant pleaded guilty unconditionally and was sentenced. Defendant's unconditional guilty plea waived any violation of the 180-day rule. 8

Standard of Review 8

Discussion 8

II. When the trial court complies with the plea taking requirements of MCR 6.302 and the defendant states that he understands those rights, then the defendant's plea is made knowingly, voluntarily, and understandingly. MCR 6.302 does not require the defendant to be notified of any notice sent pursuant to the 180-day rule by the MDOC to the prosecuting attorney. Defendant's guilty plea was entered knowingly and voluntarily. 21

Standard of Review 21

Discussion 21

Relief 24

Index of Authorities

FEDERAL CASES

Bowles v Russell,
551 US 205; 127 S Ct 2360; 168 L Ed 2d 96 (2007) 16

Cochran v Phelps,
623 F Supp 2d 544 (D Del 2009) 19

Eberhart v US,
546 US 12; 126 S Ct 403; 163 L Ed 2d 14 (1995) 16

Fex v Michigan,
507 US 43; 113 S Ct 1085; 122 L Ed 2d 406 (1993) 9

Halbert v Michigan,
545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005) 15

Henderson v Shinseki,
131 S Ct 1197; 179 L Ed 2d 159 (2011) 16

Kontrick v Ryan,
540 US 443; 124 S Ct 906; 157 L Ed 2d 867 (2004) 16

Ruhrgas AG v Marathon Oil Co.,
526 US 574; 119 S Ct 1563; 143 L Ed 2d 760 (1999) 17

STATE CASES

People v Allen,
192 Mich App 592; 481 NW2d 800 (1992) 20

Belcher v Missouri,
112 SW 3d 118 (MO App Wd, 2003). 19

Utah v Brocksmith,
888 P 2d 703 (Utah App, 1994). 19

People v Bulger,
462 Mich 495; 614 NW2d 103 (2000) 15

People v Burns,
250 Mich App 436; 647 NW2d 515 (2002) 20

Carbaugh v Missouri,
348 SW 3d 871 (Mo App 2011) 22, 23

People v Crall,
444 Mich 463; 510 NW2d 182 (1993) 14

People v Davis,
283 Mich App 737; 769 NW2d 278 (2009) 10

People v Francisco,
474 Mich 82; 711 NW2d 44 (2006) 12

People v Grant,
445 Mich 535; 520 NW2d 123 (1994) 12

People v Holt,
478 Mich 851; 731 NW2d 93 (2007) 9

People v Irwin,
192 Mich App 216; 480 NW2d 611 (1991) 19

People v Kern,
288 Mich App 513; 794 NW2d 362 (2010) 12

People v Koonce,
466 Mich 515; 648 NW2d 153 (2002) 9

People v Lannom,
441 Mich 490; 490 NW2d 396 (1992) 14

People v Lown,
488 Mich 242; 794 NW2d 9 (2011) 15, 17, 18

People v Morey,
461 Mich 325; 603 NW2d 250 (1999) 9

People v New,
427 Mich 482; 398 NW2d 358 (1986) 14, 15, 20

People v Perkins,
473 Mich 626; 703 NW2d 448 (2005) 9

People v Regains,
477 Mich 1038; 728 NW2d 68 (2007) 20

People v Smith,
438 Mich 715; 475 NW2d 333 (1990) 18

People v Stewart,
472 Mich 624; 698 NW2d 340 (2005) 8, 21

People v Thomas Clifford White,
unpublished opinion per curiam of the Court of Appeals,
issued January 24, 2013 (Docket No. 308275) 7

People v Williams,
475 Mich 245; 716 NW2d 208 (2006) 9, 10, 13, 14

People v Woodruff,
105 Mich App 155; 306 NW2d 432 (1981) 11

OTHER AUTHORITIES

MCL 750.224f 3

MCL 750.227 3

MCL 750.227f 3

MCL 780.131 . . . . . 9, 10, 11, 12, 13, 14, 15

MCL 780.133 . . . . . 15, 16, 17

18 USC 2 19

List of Appendices

Appendix	Title
A	Register of Actions
B	Trial Court Order
C	April 12, 2005, MDOC Correspondence
D	May 17, 2005, Letter to MDOC from Prosecutor's Office
E	January 19, 2011, MDOC Correspondence
F	February 3, 2011, Letter to MDOC from Prosecutor's Office
G	Defendant SID number search result
H	Defendant's Motion to Dismiss
I	CRIM Case Status
J	*People v Thomas Clifford White*, unpublished opinion per curiam of the Court of Appeals, issued January 24, 2013 (Docket No. 308275).

Statement of Jurisdiction

The People agree that this Court has jurisdiction.

Statement of Questions Presented

I.

Violation of the 180-day rule is a matter of personal jurisdiction and is waived when a defendant pleads guilty unconditionally, regardless of whether the People received the notice required under the statute. The People did not receive notice of defendant's incarceration and defendant pleaded guilty unconditionally and was sentenced. Did defendant's unconditional guilty plea waive any violation of the 180-day rule?

The trial court answered:	"No."
The Court of Appeals answered:	"Yes."
The People answer:	"Yes."
Defendant will answer:	"No."

II.

When the trial court complies with the plea taking requirements of MCR 6.302 and the defendant states that he understands those rights, then the defendant's plea is made knowingly, voluntarily, and understandingly. MCR 6.302 does not require the defendant to be notified of any notice sent pursuant to the 180-day rule by the MDOC to the prosecuting attorney. Was defendant's guilty plea entered into knowingly and voluntarily?

The trial court did not answer.

The Court of Appeals did not answer.

The People answer: "Yes."

Defendant will answer: "No."

Statement of Facts

On February 9, 2011, defendant, Thomas Clifford White, pled guilty[1] to felony-firearm.[2] In exchange, the People agreed to dismiss the charges of carrying a concealed weapon[3] and felon in possession of a firearm,[4] withdraw the notice to enhance defendant as a fourth habitual offender, and agreed to enter into a sentencing agreement, which would give defendant credit for seven years.[5] Previously, on September 5, 2003, defendant was arraigned on the charges of felon in possession,[6] felony-firearm,[7] and carrying a concealed weapon.[8] December 8, 2004, was the date scheduled for defendant's jury trial, defendant failed to appear, and defendant's bond was forfeited.[9]

The trial court addressed the issue of the 180-day rule on January 28, 2011, before defendant pled guilty. The trial court held that the People would have "needed to have received a certified letter from the Michigan Department of Corrections."[10] The trial court went on to state that "that's

---

[1] Transcripts are cited throughout this Supplemental Brief in the following form: Month/date of proceeding, page number. 2/9, 5-9.

[2] MCL 750.227f.

[3] MCL 750.227.

[4] MCL 750.224f.

[5] 2/9, 3-4.

[6] MCL 750.224f.

[7] MCL 750.227f.

[8] MCL 750.227.

[9] Appendix A, Register of Actions.

[10] 1/28/11, 6.

a requirement that is created under the law pursuant to the Michigan statute and then we've got case law. There was an actual case where that requirement was interpreted and that was under People versus Williams, 475 Mich. 245, which is a 2006 case."[11] The trial court also stated that "the bottom line is the MDOC is the one that's suppose to send a certified letter to the Prosecutor's Office."[12] The trial court sentenced defendant on April 14, 2011, in accordance with the plea agreement, for his guilty plea to felony-firearm, to a mandatory ten year sentence, with credit for seven years for the time defendant spent during his previous incarceration in Oakland County.

Defendant filed a motion to withdraw his guilty plea and claimed that the 180-day rule was violated, but failed to provide any proof of any correspondence sent to the Prosecutor's Office with his motion.[13] Defendant argued that the Michigan Department of Corrections (MDOC) acted with a lack of due diligence for their alleged failure to "call this outstanding case to the People's attention."[14] On December 6, 2011, the People consulted with the People's extradition unit to determine what correspondence was received from the MDOC in relationship to defendant. There was only one letter on file, which was dated January 19, 2011.[15] Subsequently, the People contacted the MDOC and requested all correspondence, in relationship to defendant that was sent to the Prosecutor's Office since defendant failed to appear on December 8, 2004. The MDOC returned two

---

[11] 1/28/11, 6.

[12] 1/28/11, 10.

[13] Appendix H, Defendant's Motion to Dismiss.

[14] Appendix H, Defendant's Motion to Dismiss, 2.

[15] Appendix E, January 19, 2011, MDOC Correspondence.

letters sent to the Prosecutor's office, one dated April 12, 2005,[16] apparently *not* sent by certified mail and one dated January 19, 2011, apparently sent by certified mail.[17]

Defendant is listed as Thomas Clifford White, date of birth January 9, 1959,[18] in the Register of Actions and the CRIM system.[19] The letters sent by the MDOC referred to inmate Thomas White, date of birth January 9, 1957.[20] Upon receipt of the April 12, 2005, letter the Prosecutor's Office responded and stated that there are no pending matters against the inmate, with that name and that date of birth.[21] Upon receipt of the January 19, 2011, letter the Prosecutor's Office responded and stated that there are "no pending cases against an individual with [the] name of Thomas White and the birth date of 01/09/1957, which you have provided."[22]

On January 4, 2012, the date defendant's motion was heard, the People noted that while the burden rests on defendant, the People inquired into all correspondence between the MDOC and the People in relationship to defendant.[23] The People argued that the 180-day rule was not violated because the April 12, 2005, letter from the MDOC did not conform to the statute and did not place

---

[16] Appendix C, April 12, 2005, MDOC Correspondence.

[17] Appendix E, January 19, 2011, MDOC Correspondence.

[18] Appendix A, Register of Actions. Appendix I, CRIM Case Status.

[19] Computerized Docket System used prior to Odyssey.

[20] See Appendix E, January 19, 2011, MDOC Correspondence; Appendix C, April 12, 2005, MDOC Correspondence.

[21] Appendix D, May 17, 2005, Letter to MDOC from Prosecutor's Office.

[22] Appendix F, February 3, 2011, Letter to MDOC from Prosecutor's Office.

[23] 1/4, 11.

the People on notice that defendant was in custody. Defendant did not introduce any information that would indicate that the April 12, 2005, letter was delivered by certified mail.[24]

On January 11, 2012, the trial court held that there was a violation of the 180-day rule and had she [Judge Parker] known that the rule had been "violated" she would not have accepted defendant's guilty plea.[25] The trial court stated that "an inmate is required to be brought to trial 180 days after the Michigan Department of Corrections delivers notice to the prosecuting attorney that charges against an inmate that appears to be pending."[26] Moreover, the trial court stated that "[t]his was, in fact, done by a letter dated April 12th, 2005. Inquiry was sent to the prosecuting attorneys office from the Michigan Department of Corrections."[27] The trial court determined that "the requirement that the notification provided by the MDOC be certified was effectively waived by the People and it was waived when they answered the letter."[28] The trial court also stated that "the Court believes that a search of the name of defendant would have yielded discovery of an individual by that name but with a birth date that was incorrect- - well, the birth year that was incorrect. This Court finds that the effort on the part of the People really was not comprehensive enough, it was not responsive enough."[29]

---

[24] 1/4, 3-18. Appendix B, The trial court's order.

[25] 1/11, 6.

[26] 1/11, 3.

[27] 1/11, 3.

[28] 1/11, 4.

[29] 1/11, 5.

On January 24, 2013, the Court of Appeals in an unpublished per curiam opinion vacated the trial court's order and remanded for reinstatement of defendant's guilty plea convictions and sentence.[30] The Court of Appeals held that defendant waived any errors based on a violation of the 180-day rule when he rendered his unconditional guilty plea, but did not substantively address whether the notice sent by the MDOC complied with the 180-day rule.

[30] *People v Thomas Clifford White*, unpublished opinion per curiam of the Court of Appeals, issued January 24, 2013 (Docket No. 308275). Attached as Appendix J.

Argument

I.

Violation of the 180-day rule is a matter of personal jurisdiction and is waived when a defendant pleads guilty unconditionally, regardless of whether the People received the notice required under the statute. The People did not receive notice of defendant's incarceration and defendant pleaded guilty unconditionally and was sentenced. Defendant's unconditional guilty plea waived any violation of the 180-day rule.

Standard of Review

This case involves the interpretation of MCL 780.131, the 180-day rule. This Court reviews issues of statutory interpretation de novo.[31]

Discussion

On February 9, 2011, defendant entered into a valid unconditional guilty plea and, therefore, waived any claims of error relating to the 180-day rule.

This Court framed the first issue as the following:

> whether the defendant's unconditional guilty plea waived any violation of the 180-day rule, MCL 780.131 and MCL 780.133; see People v Lown, 488 Mich 242, 268-270 (2011), where the prosecutor had received (albeit possibly not by certified mail) a written Department of Corrections (DOC) notice of the defendant's incarceration and a request for final disposition of the pending charges, had responded to the notice stating that there were no pending charges against the defendant, and commenced the criminal action five years after receipt of the notice, and where the defendant and the Wayne Circuit Court were unaware of the notice and the response at the time of the plea proceeding.

But the formulation of the issues rests on a factual premise that the People dispute, for the People did not receive notice of defendant's incarceration in the correspondence sent by the MDOC,

---

[31] *People v Stewart*, 472 Mich 624, 631; 698 NW2d 340 (2005).

because the notice did not include the proper identifying information. There was no violation of the 180-day rule because the notice and statement sent by the MDOC did not comply with the statutory requirements. To trigger the 180-day rule the MDOC must send written notice and a request for final disposition to the prosecution in the exact manner provided for within the statute.[32] A defendant has the burden to establish that the "Department of Corrections caused to be delivered by certified mail to the prosecuting attorney the written notice, request, and statement as required by MCL 780.131(1)."[33] As the United States Supreme Court observed in *Fex v Michigan*, "it is more reasonable to think that the . . . prosecutors are in no risk of losing their case until they have been informed of the request for trial."[34]

When interpreting a statute this Court's goal is to give effect to the intent of the Legislature by reviewing the plain language of the statute.[35] "If the language is clear, no further construction is necessary or allowed to expand what the Legislature clearly intended to cover."[36] This Court

---

[32] *People v Williams,* 475 Mich 245, 254-255; 716 NW2d 208 (2006) (held not to extend the language of the statute beyond its literal meaning).

[33] *People v Holt,* 478 Mich 851; 731 NW2d 93 (2007).

[34] *Fex v Michigan*, 507 US 43, 51; 113 S Ct 1085; 122 L Ed 2d 406 (1993) (*Fex* dealt with the Interstate Agreement on Detainers, which is similar to MCL 780.131, and held that where the prison was shown to forward the defendant's request for disposition to the receiving state, the statute time actually began to run on receipt of the request by the receiving state).

[35] *People v Perkins*, 473 Mich 626, 630; 703 NW2d 448 (2005), citing *People v Koonce*, 466 Mich 515, 518; 648 NW2d 153 (2002).

[36] *Koonce, supra* at 518, citing *People v Morey,* 461 Mich 325, 329-330; 603 NW2d 250 (1999).

presumes that "the Legislature intended the meaning clearly expressed," such that no further "construction is required or permitted, and the statute must be enforced as written."[37]

A notice sent by the MDOC must comply with the requirements of MCL 780.131 to trigger the 180-day rule.[38] The statute provides:

> (1) Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending *written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall* be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. *The written notice and statement shall be delivered by certified mail.*[39]

The statute requires that the prosecuting attorney receive "notice" of the defendant's incarceration. The statute does not state that notice is sufficient if the prosecuting attorney "should have known" of the inmate based on the information provided by the MDOC.[40] Rather, the statute requires that

---

[37] *Williams, supra* at 250, citing *Morey, supra* at 330.

[38] *Williams, supra* at 255-256.

[39] MCL 780.131 (*emphasis added*).

[40] *People v Davis,* 283 Mich App 737, 742; 769 NW2d 278 (2009) (rejecting the argument that the 180 days begins when the Department of Corrections knew or had reason to know that a criminal charge was pending against the defendant, because the language did not appear in the statute and to require such would improperly expand the scope of the 180-day rule statute).

the prosecuting attorney be placed on notice that there is an inmate with a pending warrant, indictment, information, or complaint in their county.[41] If that notice does not include the proper identifying information possessed by the prosecuting attorney, then the prosecuting attorney is not on notice.[42]

The People received a letter dated April 12, 2005, which did not provide notice that defendant was in custody. First, the letter only included defendant's last and first name- White, Thomas.[43] Second, the year of birth listed on the letter does not match the year of birth listed in the docket printout. The date of birth listed in the docket printout is January 9, 1959,[44] while the date of birth provided by the MDOC is January 9, 1957.[45] Third, defendant's SID number was not listed in the court system's docket printout, and neither was his social security number, or FBI number.[46] Accordingly, the People did not receive notice, in that the notice provided did not inform the People that Thomas Clifford White, born on January 9, 1959, was in custody of the MDOC on April 12,

---

[41] MCL 780.131.

[42] See *People v Woodruff*, 105 Mich App 155, 160; 306 NW2d 432 (1981) (using the previous standard of "known or should have known" the court of appeals held that the defendant's use of an alias would act as a defense to a violation of the 180-day rule because the People could not have possessed knowledge of the defendant's incarceration).

[43] Appendix A, Register of Actions. (Defendant's full name is Thomas Clifford White).

[44] Appendix A, Register of Actions. Appendix I, CRIM Case Status.

[45] Appendix C, April 12, 2005, MDOC Correspondence.

[46] Appendix I, CRIM Case Status. (Using the system in place in 2005, screen shots of the information provided for Thomas Clifford White, based on the information known now). Appendix G, Defendant SID number search result. (Using the system in place in 2005, the defendant that appears when a search was conducted by defendant's SID number).

2005.[47] Because the letter in and of itself did not provide the People with notice that defendant was in custody without requiring the People to draw an inference or make further inquiries, the People were not provided with notice of defendant's incarceration. Accordingly, the People responded on May 17, 2005, to the letter received from the MDOC on April 12, 2005, and stated "[w]e will not seek to have the inmate returned as he has no pending matters in our jurisdiction per our database."[48]

This Court seems to dismiss the requirement of the notice being sent by certified mail in its characterization of the first issue when it stated "albeit possibly not by certified mail." The plain language of the statute is clear, the written notice *"shall"* be delivered by certified mail. The term "shall" in a statute generally indicates a mandatory, rather than permissive duty.[49] Therefore, notice not delivered by certified mail violates the mandatory action required under the statute and is accordingly not sufficient notice under the statute. The statute expressly sets forth the content requirements of the written notice: 1) place of imprisonment of the inmate and 2) request for final disposition of the warrant, indictment, information, or complaint.[50] The statute also expressly sets forth the content requirements of the statement that *shall* accompany the notice: 1) term of

---

[47] At the time the People received the letter dated April 12, 2005, from the MDOC the program used to look up defendants was CRIM. The writer of the brief used that system to look up defendant based on the information provided by the MDOC. When doing so a number of Thomas White's appeared, none of which had the date of birth listed in the letter. Moreover, when conducting a search using defendant's SID number it did not retrieve Thomas White. See Appendix G, Defendant SID number search result.

[48] Appendix D, May 17, 2005, Letter to MDOC from Prosecutor's Office.

[49] *People v Kern*, 288 Mich App 513, 519; 794 NW2d 362 (2010), citing *People v Francisco,* 474 Mich 82, 87; 711 NW2d 44 (2006). See *People v Grant*, 445 Mich 535, 542; 520 NW2d 123 (1994) (the use of the term "shall" rather than "may" indicates mandatory rather than discretionary action).

[50] MCL 780.131.

commitment under which the prisoner is being held, 2) the time already served, 3) the time remaining to be served on the sentence, 4) the amount of good time or disciplinary credits earned, 5) the time of parole eligibly of the prisoner, and 6) any decisions of the parole board relating to the prisoner.[51] The statute then expressly states that "the written notice and the statement *shall* be delivered by certified mail."[52]

Defendant failed to meet his burden by failing to provide any proof that the MDOC sent the April 12, 2005, letter by certified mail.[53] Moreover, the notice that was sent failed to comply with several other aspects of MCL 780.131.[54] The notice did not include any of the following: 1) the time already served by defendant 2) the time remaining to be served on the sentence, 3) the amount of good time or disciplinary credits earned, 4) the time of parole eligibility of the prisoner, and 5) any decisions of the parole board relating to the prisoner.[55]

There was no violation of the 180-day rule because the notice did not comply with the statute.[56] Defendant failed to establish that the notice the MDOC sent to the People complied with the mandatory provisions of the statute. The requirements of the statute must be met; the plain

---

[51] MCL 780.131.

[52] MCL 780.131. See *Williams, supra* at 256 (finding that delivery by certified mail is a requirement: "There is no dispute that this written notice complied with the other requirements of the statute that it be delivered by certified mail and accompanied by a statement setting forth the defendant's term of commitment, his time served, his time remaining to be served, the amount of sentence credits earned, the time of his parole eligibility, and any decisions of the parole board.").

[53] See Appendix C, April 12, 2005, MDOC Correspondence.

[54] Appendix C, April 12, 2005, MDOC Correspondence.

[55] Appendix C, April 12, 2005, MDOC Correspondence.

[56] MCL 780.131 states: "the inmate shall be brought to trial within 180 days *after* the department of corrections *causes to be delivered*. . . written notice."

language of the statute does not provide for exceptions to the requirements and does not include waiver provisions.[57] The trial court's finding that a requirement may be "waived" would expand the plain language of the statute.[58] A provision of the statute cannot be waived by mere acknowledgment of the receipt of a letter, because the letter was defective, accordingly the 180-day rule was not triggered. Therefore, the trial judge erroneously held that the People waived the MDOC's duty to comply with the statute. There was no violation of the 180-day rule because the People did not receive notice of defendant's incarceration.

Regardless of whether the People had notice of defendant's incarceration, defendant's unconditional guilty plea waived any violation of the 180-day rule. This Court has long held that by entering into an unconditional guilty plea a defendant waives all claims that concern factual guilt and the prosecution's ability to prove its case, including any possible defenses.[59] Excluded from this general rule are the defenses that would preclude the state from obtaining a valid conviction against a defendant.[60] "Where the defense or right asserted by [a] defendant relates solely to the capacity of the state to prove [a] defendant's factual guilt, it is subsumed by [a] defendant's guilty plea."[61]

---

[57] MCL 780.131.

[58] 1/11, 4. Moreover, the trial court initially held, before accepting defendant's guilty plea, that the MDOC was required to send the People a certified letter giving notice of defendant's place of imprisonment and requesting final disposition of the pending warrant as required by statute and *People v Williams*, and the MDOC failed to do so; therefore the 180-day rule was not violated. 1/28/11, 6.

[59] *People v Lannom,* 441 Mich 490, 493; 490 NW2d 396 (1992). See *People v Crall,* 444 Mich 463; 510 NW2d 182 (1993).

[60] *Lannom, supra* at 493.

[61] *Lannom, supra* at 493, citing *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986).

All non subject-matter jurisdictional defects are waived by a unconditional guilty plea.[62] But "rights and defenses which reach beyond the factual determination of [a] defendant's guilt and implicate the very authority of the state to bring a defendant to trial are preserved."[63] Subject-matter jurisdictional defects and cases where the state has no legitimate interest in securing a conviction are preserved.[64]

A violation of the 180-day rule is a personal jurisdiction defect, waived by an unconditional guilty plea.[65] The 180-day rule under MCL 780.131states the following:

> (1) Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.[66]

---

[62] *People v Lown,* 488 Mich 242, 268; 794 NW2d 9 (2011). See *New, supra* at 488 (citation omitted).

[63] *New, supra* at 492 (citation omitted).

[64] *New, supra* at 489.

[65] See *People v Bulger,* 462 Mich 495, 517 n 7; 614 NW2d 103 (2000), rev'd on other grounds in *Halbert v Michigan,* 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005). (By pleading guilty or nolo contendere a defendant waives claims of violation of the statutory 180-day rule).

[66] MCL 780.131.

The remedy for a violation of the 180-day rule is set forth in MCL 780.133:

> In the event that, within the time limitation set forth in section 1 of this act, action is not commenced on the matter for which request for disposition was made, no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.[67]

Defendant waived any claim regarding a violation of the 180-day rule when he entered into his unconditional guilty plea. MCL 780.133, as it concerns a loss of personal jurisdiction and not subject-matter jurisdiction, is best described as an "inflexible claim-processing rule," for this is precisely how it functions. And as the United States Supreme Court has observed, there is a "a critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule. Characteristically, a court's subject-matter jurisdiction cannot be expanded to account for the parties' litigation conduct; a claim-processing rule, on the other hand, *even if unalterable on a party's application*, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point."[68] MCL 780.133 is an inflexible claim-processing rule. "Action must be commenced" on the criminal case for which disposition was requested in the manner required by the statute within 180 days or the court loses personal jurisdiction.[69] There is no flexibility; this claim-processing rule requires dismissal with prejudice. But the rule may be forfeited or waived.

---

[67] MCL 780.133.

[68] *Kontrick v Ryan*, 540 US 443, 456; 124 S Ct 906, 916; 157 L Ed 2d 867 (2004). See also *Eberhart v US*, 546 US 12; 126 S Ct 403; 163 L Ed 2d 14 (1995). Cf. *Bowles v Russell*, 551 US 205; 127 S Ct 2360; 168 L Ed 2d 96 (2007).

[69] A statute may be a claim-processing rule and also have conditions attached that make it jurisdictional. See *Henderson v Shinseki*, 131 S Ct 1197, 1203; 179 L Ed 2d 159 (2011) ("Congress is free to attach the conditions that go with the jurisdictional label to a rule that we would prefer to call a claim-processing rule.")

The 180-day rule is a claim-processing rule that the Legislature has attached jurisdictional conditions to, but because the jurisdictional conditions are matters of personal jurisdiction, they are waivable.[70]

The 180-day rule is a claim-processing rule, which is in line with *People v Lown's* characterization of the statute.[71] This Court held in *People v Lown* that a party may waive violation of the 180-day rule. In *Lown* the defendant argued that violation of the 180-day rule deprived the courts of subject-matter jurisdiction. The Court held that subject-matter jurisdiction "'concerns a court's abstract power to try a case of the kind or character of the one pending, and is not dependent on the particular facts of the case,'" and is not subject to waiver.[72] But a party may stipulate to, waive or implicitly consent to the court's jurisdiction over a particular person, which is personal jurisdiction.[73] The Court held that "the jurisdictional aspect of the 180-day rule, MCL 780.133, requires dismissal of a particular defendant in a particular case when the rule is violated, however, the rule governs personal jurisdiction and thus is waivable."[74] The Court stated that "Justice Boyle reached this very result following a well-reasoned analysis in her concurring opinion in *People v*

---

[70] *Ruhrgas AG v Marathon Oil Co.*, 526 US 574, 584; 119 S Ct 1563; 143 L Ed 2d 760 (1999) (citation omitted) (Personal jurisdiction "represents a restriction on judicial power...as a matter of individual liberty" and "a party may insist that the limitation be observed, or he may forgo that right, effectively consenting to the court's exercise of adjudicatory authority.").

[71] *Lown, supra,* 488 Mich 242.

[72] *Lown, supra* at 268 (citation omitted).

[73] *Lown, supra* at 268 (citation omitted).

[74] *Lown, supra* at 268-269.

Smith,[75] when she concluded that a violation of the 180-day rule is waived by an unconditional guilty plea."[76]

Other jurisdictions have determined that a defendant waives a claim under the similar Interstate Agreement on Detainers (IAD), after pleading guilty. The IAD, which is almost identical to MCL 780.131, states in relevant part:

> (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: Provided, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.
> (b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.
> (c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him

---

[75] *People v Smith*, 438 Mich 715; 475 NW2d 333 (1990).

[76] *Lown, supra* at 269 (citation omitted).

> of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.
>
> ***
>
> [I]n the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III ... hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect. [77]

Utah v Brocksmith held that the defendant waived his rights under the IAD by voluntarily entering an unconditional guilty plea.[78] Similarly, *Cochran v Phelps* held that "a defendant who pleads guilty waives the right to a speedy trial, as well as the right to claim rights under the provisions of the IAD."[79] In *Belcher v Missouri* the Court held that the defendant waived any claims that he may have had under the IAD to the disposition of the charges within 180 days when he pled guilty.[80]

In Michigan, the Court of Appeals in *People v Irwin* held that the defendant's unconditional plea of guilty waived review of any claim that constitutional or statutory speedy trial rights were denied, including whether the 180-day speedy trial rule was violated.[81] In *People v Regains*, Justice Corrigan in a concurring opinion likewise explained that under current law "speedy trial issues no

---

[77] 18 USC 2.

[78] *Utah v Brocksmith*, 888 P 2d 703, 705 (Utah App, 1994).

[79] *Cochran v Phelps,* 623 F Supp 2d 544, 556 (D Del 2009).

[80] *Belcher v Missouri,* 112 SW 3d 118, 120 (MO App Wd, 2003).

[81] *People v Irwin,* 192 Mich App 216, 217; 480 NW2d 611 (1991).

longer implicate the state's authority to bring a defendant to trial," thereby waiving the issue upon entering an unconditional guilty plea.[82]

Similarly, the Court of Appeals has held that the statute of limitations defense in a criminal case is a nonjurisdictional waivable affirmative defense.[83] Michigan Courts have held that the purpose of the statute of limitations "relates to determining a defendant's factual guilt."[84] The Court of Appeals compared the statute of limitations to the defendant's right to a speedy trial, stating that both are clearly related to determining the factual guilt of a defendant.[85]

Here, defendant undisputedly entered into a valid unconditional guilty plea. Defendant waived all claims of error in relationship to any alleged violation of the 180-day rule when he unconditionally pled guilty.[86] As found in *Lown, Irwin,* and *Smith,* a violation of the 180-day rule only affects personal jurisdiction and, therefore, is waivable. Defendant's claim of error arising from an alleged violation of the 180-day rule affects only the trial court's personal jurisdiction, and not the state's ability to obtain a valid conviction. Therefore, defendant waived any violation of the 180-day rule when he entered his unconditional guilty plea.

---

[82] *People v Regains,* 477 Mich 1038, 1039; 728 NW2d 68 (2007) (Corrigan Concurring).

[83] *People v Burns,* 250 Mich App 436, 439-440; 647 NW2d 515 (2002).

[84] *Burns, supra* at 440 (citation omitted).

[85] *People v Allen*, 192 Mich App 592, 602; 481 NW2d 800 (1992).

[86] This is true even though defendant raised the issue in a motion before he entered his guilty plea. See *New*, *supra* at 485 (The defendant could not raise as error on appeal the denial of a motion to suppress evidence or the denial of a motion to quash the information, because by pleading guilty the defendant waived the right to raise the issues on appeal.)

II.

When the trial court complies with the plea taking requirements of MCR 6.302 and the defendant states that he understands those rights, then the defendant's plea is made knowingly, voluntarily, and understandingly. MCR 6.302 does not require the defendant to be notified of any notice sent pursuant to the 180-day rule by the MDOC to the prosecuting attorney. Defendant's guilty plea was entered knowingly and voluntarily.

Standard of Review

This case involves the interpretation of MCL 780.131. This Court reviews issues of statutory interpretation de novo.[87]

Discussion

Defendant's unconditional guilty plea was entered knowingly and voluntarily. It is not disputed that the trial court substantially complied with the plea-taking requirements of MCR 6.302. Rather, this Court raises the question of whether defendant is entitled to be notified of any notice sent by the MDOC to the People pursuant to the 180-day rule. The answer to this question is no. The language of the180-day rule and MCR 6.302 does not require such notice to the defendant and because it is the defendant who challenges the 180-day rule, the defendant actually has the burden to raise and support his claim.

MCR 6.302 states in relevant part:

> (B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:
> (1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;

---

[87] *Stewart*, *supra* at 631.

(2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c;
(3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:
(a) to be tried by a jury;
(b) to be presumed innocent until proved guilty;
(c) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;
(d) to have the witnesses against the defendant appear at the trial;
(e) to question the witnesses against the defendant;
(f) to have the court order any witnesses the defendant has for the defense to appear at the trial;
(g) to remain silent during the trial;
(h) to not have that silence used against the defendant; and
(i) to testify at the trial if the defendant wants to testify.
(4) if the plea is accepted, the defendant will be giving up any claim that the plea was the result of promises or threats that were not disclosed to the court at the plea proceeding, or that it was not the defendant's own choice to enter the plea;
(5) any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right.

MCR 6.302 specifically states the rights that the court must inform the defendant of, none of which include advisement of any notice sent pursuant to the 180-day rule. Whether defendant entered into his plea knowingly and voluntarily is separate and distinct from whether he was informed of any notice sent by the MDOC to the prosecuting attorney under the 180-day rule.

In *Carbaugh v Missouri*, the court dealt with a similar issue, but under the comparable Interstate Agreement on Detainers.[88] In *Carbaugh*, the defendant pled guilty despite his insistence that his plea counsel raise a claim challenging the court's jurisdiction under the IAD for failing to

[88] See Argument I, *supra*.

bring the charges to trial within 180 days.[89] The defendant claimed that his guilty plea was not entered into knowingly or voluntarily because his plea counsel would not raise any issue about the IAD violations and he was not advised that his guilty plea would waive these claims.[90] *Carbaugh* held that whether the defendant "was aware that he was waiving his IAD protections does not matter because there is no requirement that waiver of IAD protections must be made knowingly or intelligently."[91] *Carbaugh* held that the defendant's guilty plea, was voluntary, knowing, and understanding.

Similarly, defendant's guilty plea was entered into knowingly and voluntarily regardless of defendant's awareness of the deficient notice sent under the 180-day rule, because waiver of the 180-day rule does not need to be made knowingly or voluntarily. Here, defendant raised the claim that the 180-day rule was violated and, therefore, the charges against him should be dismissed, but failed to meet his evidentiary burden. Defendant did not produce any notice sent by the MDOC to the People pursuant to the 180-day rule. At the same time, the People did not have notice of defendant's incarceration as the letter (not certified) sent by the MDOC did not place the People on notice that defendant was incarcerated. The People's lack of notice did not make defendant's guilty plea unknowing and involuntary.

---

[89] *Carbaugh v Missouri,* 348 SW 3d 871 (Mo App 2011).

[90] *Carbaugh, supra* at 877.

[91] *Carbaugh, supra* at 877.

Relief

THEREFORE, the People respectfully request that this Court either deny leave to appeal or affirm the Court of Appeals decision reinstating defendant's guilty plea and sentence.

Respectfully submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

TIMOTHY A. BAUGHMAN
Chief of Research, Training, and Appeals

MADONNA GEORGES BLANCHARD (P74068)
Assistant Prosecuting Attorney
11th Floor, 1441 St. Antoine
Detroit, Michigan 48226
313-224-5764

Date: December 5, 2013